

Iowa General Assembly

2014 Committee Briefings

Legislative Services Agency – Legal Services Division : <https://www.legis.iowa.gov/committees/committee?ga=85&groupID=588>

SENATE GOVERNMENT OVERSIGHT COMMITTEE

Meeting Dates: [September 30, 2014](#) | [August 26-27, 2014](#) | [June 25, 2014](#) | [June 9, 2014](#)

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/>, or from the agency connected with the meeting or topic described.*

SENATE GOVERNMENT OVERSIGHT COMMITTEE

September 30, 2014

Chairperson: Senator Janet Petersen

Vice Chairperson: Senator Brian Schoenjahn

Overview. The primary focus of the meeting concerned consideration of recommendations developed based upon testimony received by the committee on a variety of issues during the period spanning March through September of 2014. The issues included settlement agreement confidentiality provisions and related compensation, whistleblower protection provisions, state employee hiring practices, the existence of a “do-not-hire” database, competitive bidding practices for state construction projects, state infrastructure project accountability, the independence of administrative law judges, unemployment trust fund administration practices and fraud investigation staffing levels within the Iowa Department of Workforce Development, and the efficiency and transparency of state agency operations.

Opening Remarks. Chairperson Petersen referred to a document containing proposed committee findings and recommendations that had been distributed to committee members prior to the meeting. She characterized the recommendations as a comprehensive set of reforms intended to address and remedy issues and practices which have been identified as damaging the effective operation of state government and indicated that she anticipated the recommendations will result in legislation designed to prevent similar issues and practices from arising in the future.

Senator Garrett stated that state agencies should be challenged on an ongoing basis to improve their service to Iowans, that they should continuously strive to increase transparency and accountability, and that there has probably been room for such improvement under previous administrations as well. He stated his intent to reintroduce legislation from the 2014 Legislative Session intended to prohibit confidentiality provisions in settlement agreements. He concluded by summarizing areas of disagreement with the proposed findings and recommendations distributed by Chairperson Petersen.

Recommendations. The following recommendations were passed by the committee, with Chairperson Petersen, Senator McCoy, and Senator Schoenjahn voting in favor of the recommendations and Senator Garrett and Senator Schneider voting against the recommendations:

- Ban the use of secret settlements and hush money in all branches of government.
- Eliminate slush funds and the ability of departments and agencies to have a blank checkbook for settlement payments.
- Create appropriate transparency mechanisms and oversight on state employee settlements.
- Expand protections for those who blow the whistle on wrongful activities in state government.
- Require all job openings in state government to be openly advertised.
- Create appropriate transparency mechanisms and oversight on newly created state positions.
- Reform the state's “do-not-hire” or “blacklist” database to ensure due process.
- Require all state entities to follow formal competitive bidding procedures for construction projects above \$100,000, including [the cost of] preliminary architectural and engineering services.

- Require that architectural and engineering services adhere to the same level of bidding and procurement requirements as any other construction service.
- Require all major infrastructure changes to be approved by the legislative committee that originally appropriated the money.
- Reinstate the Vertical Infrastructure Advisory Committee.
- Review the state construction cost benefit analysis by the Legislative Services Agency and act on its recommendations.
- Review existing Iowa law regarding the adjudicative process to ensure Iowans receive a fair and impartial hearing.
- Prohibit all political appointees and at-will employees from supervising or evaluating administrative law judges to preserve their [judges'] integrity and independence in decision making.
- Iowa [Department of] Workforce Development and the Unemployment Trust Fund must have honest, transparent leadership.
- Iowa [Department of] Workforce Development needs to work with the Legislature to develop a plan to update or replace their call-in system for unemployment.
- The Legislature should be notified when the Governor receives reports of founded workplace violence reports in state agencies.
- The Legislature should reexamine the duties of the Department of Administrative Services to reign in its [the Department's] ability to control and hide unacceptable government practices from the Legislature and Iowa taxpayers.

Additional Discussion. Senator Petersen indicated that copies of a state construction project cost benefit analysis prepared by the Legislative Services Agency and referenced in one of the recommendations will be distributed to committee members. Senator McCoy expressed concern regarding delays in the opening of a new facility at the Iowa State Penitentiary at Fort Madison and suggested a possible visit to the facility and further investigation by committee members.

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SENATE GOVERNMENT OVERSIGHT COMMITTEE

August 26-27, 2014

Chairperson: Senator Janet Petersen

Vice Chairperson: Senator Brian Schoenjahn

Overview. The primary focus of the meeting concerned discussion of an Issue Review prepared by the Fiscal Services Division of the Legislative Services Agency relating to expenditures by the Department of Administrative Services (DAS) during a specified fiscal period, testimony by Iowa Workforce Development (IWD) personnel relating to judicial independence and workplace environment concerns, and the circumstances surrounding an information technology systems malfunction resulting in an overpayment of unemployment benefits.

Issue Review Discussion. Ms. Holly Lyons, Director, Fiscal Services Division, Legislative Services Agency (LSA), accompanied by Mr. Ron Robinson, Senior Legislative Analyst, Fiscal Services Division, LSA, summarized and provided background information in connection with the publication of an Issue Review examining DAS expenditures during the 2008-2009 through 2012-2013 fiscal years.

Ms. Lyons explained that the Issue Review was developed in response to questions the division was receiving regarding progress made by DAS in achieving a minimum expenditure reduction goal of 15 percent. The Issue Review concluded that in light of a 17.6 percent increase in DAS expenditures during the preceding two-year period, it did not appear the cost-savings goal was being realized. Ms. Lyons emphasized that the focus was on overall expenditures and trends rather than examining the direct impact of any specific cost-savings measure. Committee discussion included the extent to which cost savings resulting from a change in DAS construction project methodology was reflected in the fiscal analysis, the difficulty involved in analyzing the specific financial savings achieved due to outsourcing, the source of the financial information relied upon, and whether DAS was contacted as part of the research that was conducted.

Mr. Lon Anderson, Chief Financial Officer, DAS, appeared by unanimous consent to provide a response to the Issue Review and committee discussion. Mr. Anderson stated that DAS was not contacted prior to issuance of the document,

and maintained that the expenditure increases identified are attributable to state agency motor vehicle purchases of approximately \$9 million and a one-time legislatively mandated information technology consolidation of approximately \$8 million.

Administrative Law Judge Testimony. Six current or former Administrative Law Judges(ALJs) with IWD provided their perspective regarding the operation and management of the Appeals Bureau within IWD and allegations of pressure to rule in favor of employers in unemployment compensation cases.

- **Current ALJs.** Judges Devon Lewis and Teresa Hillary provided testimony regarding the nature of the work performed by ALJs and their role within IWD's Appeals Bureau. Ms. Lewis summarized the process whereby an unemployment benefits claim progresses from an initial decision to an appeal, the role performed by ALJs in deciding a case, and the factors relied upon in making their determination. In response to committee questions, the judges acknowledged the existence of "tip sheets" and characterized them as publicly posted general outlines on selected issues developed by the Appeals Bureau which reflect frequently asked questions in connection with the unemployment benefits process. They maintained that the tip sheets were not developed to influence decisions on appeal, and that they have not been pressured at any time to decide a case in a particular direction. The importance of timeliness in deciding cases was addressed from the standpoint of a client in need of a source of income, a small business owner concerned about cash flow, and federal Department of Labor (DOL) requirements which condition full funding upon the achievement of designated case decision timing metrics. The judges additionally discussed their responsibilities as lead workers within the Appeals Bureau, and maintained that while they would not characterize the bureau as a hostile work environment, some tension was generated over their lead worker status, a renewed emphasis on accountability, and the decision to limit the ability of ALJs to work from home.
- **Former ALJ.** Mr. Joseph Walsh, Deputy Workers Compensation Commissioner and former Chief Administrative Law Judge for IWD, provided an opening statement describing his professional relationship with IWD Director Teresa Wahlert and contending that judicial independence within the Appeals Bureau has been compromised under her leadership. Mr. Walsh indicated that he gradually began to perceive a bias on the part of Director Wahlert in favor of employers over unemployed lowans, describing tip sheets developed for employers at her direction as legal advice to avoid paying unemployment insurance benefits. He maintained that Director Wahlert attempted to convey through her messages and actions that the ALJs were granting benefits too often or that she was dissatisfied with judicial outcomes, resulting in a perception among some ALJs that their judicial independence was being compromised. Mr. Walsh additionally described efforts by Director Wahlert to have his position reclassified from merit to at-will, his assertion that judges must be accorded merit protection, her ultimate reversal of the reclassification, and his being laid off shortly thereafter. Mr. Walsh stated that when Director Wahlert subsequently took over management of the Appeals Bureau, the fundamental tenets of judicial independence were compromised and a built-in appearance of impropriety and conflict created. He countered the contention that he was laid off for performance reasons, citing improvements in achieving standards for timeliness and efficiency. Mr. Walsh offered as recommendations to the committee the passage of legislation requiring judges to be free of pressure from political operatives and designated merit employees, and urging the appointment of independent counsel to fully review policies applicable to the administrative judiciary.
- **Other ALJs.** Judges Marlon Mormann, Susan Ackerman, and Bonny Hendricksmeier, testifying as a panel, related a number of concerns regarding the work environment at the Appeals Bureau following the removal of Mr. Walsh as Chief ALJ. They indicated that judicial independence has been compromised based on Director Wahlert's management of the bureau, that a necessary buffer between the director and the ALJs is now lacking, that the emphasis on expediency interferes with judicial outcomes and the ability to generate thorough case decisions, that the number of hours devoted to hearing cases has become excessive, that required workload pressures are exacerbated by a reduced workload assigned to lead workers, and that working at home restrictions, rather than enhancing accountability, actually reduce efficiency. In response to committee inquiry, the ALJs recounted correspondence from Director Wahlert regarding case decisions which they contended reflected pressure or constituted a personal affront, and cited concerns about the perception of problems at the agency raising questions regarding the fairness and propriety of judicial decisions by the ALJs.
- **Appeals Bureau Clerk.** In addition to the ALJ testimony, Ms. Joni Benson, a clerk in the Appeals Bureau, described her responsibility in assigning cases to the ALJs, emphasizing that such assignments are made on a random basis and that she has never felt pressured to assign certain cases to specific ALJs. Ms. Benson further stated that while she feels the atmosphere within the bureau has improved with the achieving of increased compliance with DOL requirements, she acknowledged the existence of deviousness within the bureau.

Unemployment Compensation Overpayments and Fraud Investigations

- **IWD Administrators.** Mr. David Eklund, Bureau Chief, Unemployment Insurance, IWD, and Mr. Michael Wilkinson, Division Administrator, Unemployment Insurance, IWD, discussed the circumstances surrounding an overpayment of unemployment benefits and communications undertaken in relation thereto. Mr. Wilkinson attributed the overpayments to a computer error which resulted in benefit claim reports not being credited, generating concern that payments would not be disbursed on schedule. It was explained that the decision was made to distribute payments

based on previously entered reports, which prompted phone calls from 85 individuals indicating they received overpayments they were not entitled to.

Committee inquiry focused on a strongly worded email regarding the computer error sent to IWD fraud investigators by Mr. Eklund which stated that if information about the computer error was disseminated, there would be “repercussions.” Mr. Eklund justified the email as necessary to prevent further disclosure of misinformation about the overpayments by one of the investigators. Committee inquiry included the probability that additional overpayments were received, the likelihood of similar errors in the future, the age of the computer system utilized for unemployment benefit tracking, whether disciplinary action was taken against the fraud investigator spreading misinformation, the ramifications of a reduction in the number of fraud investigators, and efforts being undertaken to verify benefit claims submitted by noncitizens.

- **IWD Fraud Investigators.** Ms. Jane Connor and Ms. Karen VonBehren, Fraud Investigators, Unemployment Insurance, IWD, provided background regarding their work in uncovering potential unemployment benefit overpayments, the average number of cases and associated overpayment amounts in their investigation regions, and the reduction in the number of fraud investigators and resulting backlog in certain regions.

In response to committee inquiry regarding their reaction to receiving the email from Mr. Eklund, they indicated they were upset, surprised by the need for secrecy, concerned that the decision to make the overpayments compromised the ability to prosecute for fraud that week and resulted in employer payments that need not have been made, and also concerned about public perception regarding the integrity of the system. When asked how they might have handled the situation differently, Ms. VonBehren responded that it would have been preferable to notify the media immediately and inform claimants that benefit payments would be delayed pending repairing the system and entering accurate data for the week.

- **IWD Factfinders.** Mr. Philip Peacock and Ms. Kim Rieger, Factfinders, IWD, provided testimony regarding their work as unemployment compensation factfinders gathering information prior to an initial determination on a claim. They indicated that assignments are made randomly, that they have not experienced influence or pressure regarding initial determinations, and that the atmosphere at IWD is tense.

IWD Director Perspective. Ms. Wahlert provided her perspective regarding the previous testimony by current and former IWD staff regarding the work atmosphere at the department and issues in connection with the ALJs. Director Wahlert summarized her management approach and philosophy as emphasizing accountability and the achievement of metrics, encouraging innovation and customer service, and being direct in dealing with employees.

In response to committee inquiry, the director indicated she was not surprised by the complaints raised by the ALJs, and attributed them to discomfort in the face of change and an increased emphasis on accountability. She responded to judicial independence concerns by stating that she did not consider them valid, that the DOL informed her that ALJ management approaches vary among the states, and that her objective in stepping into the management role was to find out what was causing noncompliance with DOL metrics and inefficiency, with the ultimate goal of achieving compliance and acquiring additional funding that would otherwise be awarded to states with a high compliance rate. Further, Director Wahlert justified the reduced number of case hours assigned to lead workers by noting they are assigned a number of additional responsibilities, supported the email from Mr. Eklund as an effort to prevent the spread of misinformation, maintained that there is no evidence to support that additional overpayments beyond the 85 documented cases were made, and disagreed with contentions that she applied pressure to make decisions favoring employers and tracked ALJ decisions. Comments from committee members included a characterization of IWD as a dysfunctional workplace which needs to be remedied, and the observation that the push for efficiency is sacrificing justice.

Recommendations. Chairperson Petersen encouraged committee members to develop a list of potential recommendations based upon the testimony received during the meetings conducted this year to date for consideration at a future meeting.

Next Meeting. The date, time, and agenda for the next committee meeting has not been determined at this time.

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SENATE GOVERNMENT OVERSIGHT COMMITTEE

June 25, 2014

Chairperson: Senator Janet Petersen

Vice Chairperson: Senator Brian Schoenjahn

Overview. The primary focus of the meeting concerned continued questioning and testimony relating to settlement

agreements entered into by the Department of Administrative Services (DAS) containing confidentiality clauses and payments relating to those clauses, the existence and operation of a disqualified employee coding procedure maintained by DAS for employment screening, and implementation of a project to construct new facilities and renovate existing facilities on the grounds of the Iowa Veterans Home (IVH).

Mr. Thomas “Ryan” Lamb, Former Legal Counsel, Department of Administrative Services. The committee received sworn testimony from Mr. Lamb following the withdrawal of a Motion to Quash Subpoena which he had filed after being served with a subpoena to testify. Citing the granting of partial immunity by the Iowa Attorney General’s Office with regard to a limited waiver of attorney work product and privileged and confidential communication restrictions, Mr. Lamb indicated that he would provide testimony as permitted by the limited waiver, and subject to any other applicable privileged communication provisions.

Areas of inquiry by committee members included the nature, scope, and duration of Mr. Lamb’s employment at DAS, his preparation in advance of this meeting, other individuals and entities providing legal advice to DAS and his level of authority in relation to those individuals and entities, how the settlement process is typically conducted and how settlement figure amounts are negotiated and agreed upon, the extent to which confidentiality clauses are generally included in DAS settlement agreements, and whether Mr. Lamb consulted with members of the Governor’s staff and the Department of Management regarding the contents of settlement agreements. Mr. Lamb stated that he had undertaken a revision of a standard settlement agreement form utilized by DAS in an effort to achieve more uniformity and in doing so retained confidentiality provisions previously contained in the form. With regard to settlement agreements entered into with four employees who had filed grievances following a DAS restructuring, which has been a central focus during the settlement process investigation, Mr. Lamb indicated that confidentiality provisions had not been discussed during mediation procedures with two of the employees, that legal counsel for one of the employees subsequently questioned inclusion of such provisions when reviewing the settlement agreement, and that an increased level of consideration (money) was agreed upon for inclusion of the provisions with regard to that employee.

Additional areas of inquiry concerned the extent to which other individuals might have had knowledge of the incorporation of confidentiality clauses and inclusion of additional consideration in DAS settlement agreements, the source of funding for the additional consideration, how Mr. Lamb responded when asked by specified individuals whether there had been instances of additional consideration for confidentiality included in settlement agreements, efforts made by Mr. Lamb prior to Director Carroll’s testimony on April 3, 2014, to amend his previous response to that question in light of a recollection of correspondence which could potentially be interpreted or construed to suggest consideration in exchange for confidentiality, the frequency of his interactions with members of the Governor’s staff, the manner in which such communications took place, and the rationale for and implementation of restructuring which occurred within DAS’s Design and Construction Resources Bureau resulting in the personnel layoffs culminating in the settlement agreements.

Mr. Lamb also provided testimony regarding his involvement with the issuance of a Request for Proposals (RFP) for the provision of design and architectural services in connection with a construction project at the IVH involving a combination of state and federal funding. The project was the primary focus of the June 9, 2014, Senate Government Oversight Committee meeting. Committee inquiry focused on the circumstances surrounding the issuance of a second RFP replacing the firm originally selected to provide design and architectural services, Schemmer and Associates, Inc., with OPN Architects. Discussion included whether the length, response period, and project description contained in the RFP was typical of other RFPs issued by DAS, Mr. Lamb’s role in the selection process and the negotiation of a contract with OPN, the risks involved with commencing a construction project without a signed contract in place and the frequency with which this occurs, and whether the RFP conformed with or satisfied federal funding requirements.

Further committee inquiry included Mr. Lamb’s awareness of the disqualified employee coding procedure operated by DAS and concerns regarding the degree of discretion afforded an employer pursuant to an administrative rule associated with the procedure, and efforts undertaken by DAS to broaden the definition of a “confidential employee” to cure an objection filed to an administrative rule which resulted in the reclassification of employees from merit status to at-will employees.

Mr. Mike Carroll, Former Director, Department of Administrative Services. The committee received sworn testimony from Mr. Carroll, former Director of DAS, which began with an opening statement describing his background and family history in Iowa, the satisfaction he had experienced serving in the capacity of Director of DAS, the challenges involved with the position, the pride he took in his employees, and his disappointment and disillusionment following termination. Mr. Carroll maintained that his testimony during the April 3, 2014, committee meeting reflected the knowledge he possessed at that time and was based upon input he had received from his staff. He indicated that in response to being notified by Mr. Lamb that potential correspondence existed which might suggest additional consideration in exchange for confidentiality, a large and thorough search of Mr. Lamb’s correspondence was coordinated by Ms. Janet Phipps, then serving as the attorney for DAS, which uncovered no documentation to that effect. Discussion included Mr. Carroll’s general reliance upon his staff, the extent to which he reviewed settlement contract provisions prior to signing them, the financial savings achieved through DAS restructuring efforts, the conducting of a meeting involving DAS and Governor’s Office staff prior to his testimony, and the manner in which his termination was communicated to him. Mr. Carroll indicated that he did not consider the employee disqualification coding process to constitute a “list,” and that he was not

directly involved in the RFP and contract negotiation process regarding the IVH construction project. Differing opinions were expressed among committee members regarding the extent to which the restructuring resulted in a financial savings, and Chairperson Petersen indicated the committee is awaiting a report from the State Auditor's Office relating to this issue.

DAS Representatives. Three current employees of DAS, Ms. Phipps, Director, Ms. Michelle Minnehan, Chief Operating Officer, Human Resources Enterprise, and Mr. Bill West, Administrator, Employment Services, provided sworn testimony to the committee in panel form. Ms. Minnehan reviewed the employee disqualification coding process and the submission of additional documentation when a former employee's name was forwarded to DAS for coding, discussed removal of employees who were determined to have been incorrectly placed on the list, and described a policy change creating a pending status prior to placement on the list for employees pursuing an appeal or involved in the grievance process. Ms. Phipps described employer training efforts conducted by DAS personnel regarding what constitutes a disqualification, disqualified employee appeal rights, and the existence of a class-action lawsuit regarding the disqualification coding process. Committee inquiry included whether disqualified employees should be notified of their status at the time of placement on the list versus when applying for a new position, balancing the rights of the impacted former employees against the need to protect the state from reemploying individuals in inappropriate capacities, whether employees subject to the reduction-in-force restructuring have been placed on the disqualification list, and whether a disproportionate number of females formerly employed at IVH were placed on the list. Other questions directed at Ms. Phipps involved the adjustment process regarding her new responsibilities and whether efforts were being undertaken to continue examining settlement agreements, the number of state construction projects currently underway and the financial commitment toward those projects, continuing the restructured outsourcing process regarding construction projects, hiring practices within DAS and a commitment to posting all job openings, procedures in place regarding employee complaints received by DAS, potential whistleblower protection provision changes, and whether individuals involved in an investigation receive notice of the investigation's outcome.

Mr. Doug Woodley, Former Chief Operating Officer, General Services Enterprise, DAS. The committee received sworn testimony from Mr. Woodley, regarding the settlement agreement investigation and the IVH construction project RFP process. Mr. Woodley indicated that he was not involved in the 24 settlement agreements which have been made public by the Governor's Office, and that prior to his testimony on April 3, 2014, he attended a meeting at the Governor's Office for the purpose of receiving information regarding what to expect when testifying before the committee. He stated that he was not aware that Mr. Lamb had contacted Mr. Carroll prior to Mr. Carroll's testimony regarding the potential correspondence. Regarding the IVH construction project and the conducting of a second RFP process, Mr. Woodley described the RFP selection process, indicating that a selection committee was appointed and a score sheet developed, and that three firms were selected for interview out of seven responding to the RFP. Mr. Woodley indicated that he felt respondents either would have known the project involved the IVH or would have contacted him for this information, and that it was his impression based on contacts with the IVH that the project was subject to a tight timeframe for completion. Committee discussion included the merits of retaining a firm originally awarded a contract let through an RFP and familiar with a project when aspects of the project undergo a design change rather than conducting a second RFP process and selecting another firm, the circumstances under which a decision to change vendors can result in a cost and time savings, and whether such a decision was warranted in this instance. Regarding inquiry concerning federal funding involved in the project, Mr. Woodley referred the committee to IVH staff as the appropriate individuals for a response.

Next Meeting. The date, time, and agenda for the next committee meeting has not been determined at this time.

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SENATE GOVERNMENT OVERSIGHT COMMITTEE

June 9, 2014

Chairperson: Senator Janet Petersen

Vice Chairperson: Senator Brian Schoenjahn

Background. On May 2, 2014, the Senate adopted Senate Resolution 121, conferring authority upon its standing Committee on Government Oversight to investigate issues relating to the management practices and procedures of state agencies.

On June 9, 2014, the committee considered a project to construct new facilities and renovate existing facilities on the grounds of the Iowa Veterans Home (IVH) located in Marshalltown. Beginning in 2006, the General Assembly enacted a number of Acts which appropriated moneys to support the project which was managed by IVH in cooperation with the Iowa Department of Administrative Services (DAS). IVH and DAS issued a Request for Proposals (RFP) and selected Schemmer and Associates, Inc. (Schemmer) to prepare a master plan and furnish design and architectural services. The

master plan included four phases with a total state cost of approximately \$40 million with a total project cost of more than \$100 million. It was anticipated that approximately 35 percent of the project cost would be contributed by the state and approximately 65 percent of the project cost would be contributed by the United States Department of Veterans Affairs (VA). Phase 1 provided for the construction of two new buildings (the Ulery Building, a 120-bed nursing home, and the Fox Building, a 60-bed pavilion for nursing care), Phase 2 provided for the construction of a new 60-bed pavilion and the renovation of the existing Dack Building, Phase 3 provided for the replacement of a new main entrance at the Loftus Building, and Phase 4 provided for the construction of a new 60-bed pavilion.

In 2011, DAS implemented a reduction in force. In December of that year, the construction of the Fox and Ulery buildings was completed. In fiscal year 2010-2011, the project had been suspended after construction bids for Phase 2 had been received. The state replaced Schemmer with OPN Architects (OPN), and employed the DCI Group (DCI) to provide construction management services. In 2011, a new application was submitted to the VA for funding. A revised plan was adopted, which eliminated references to specific phases, provided for the renovation of the Dack and Malloy buildings, eliminated renovations to the Loftus Building, and proposed the construction of a 72-bed community living center (CLC). The VA has approved the renovation of the Dack and Malloy buildings and work is underway. IVH has temporarily withdrawn its application to the VA for funding the construction of the CLC and is redesigning that facility, including by reducing the number of beds to 60.

The committee received testimony concerning the IVH project but did not take specific action.

Mr. Mark Higgins, Schemmer. The committee received testimony from Mr. Mark Higgins, executive vice president for Schemmer's architectural division. Mr. Higgins stated that his firm was awarded a bid after responding to a 40-page RFP. He estimated costs associated with different phases of the project and stated that his firm oversaw the completion of Phase 1 and the letting of bids for Phase 2, but noted that a contract was not awarded for Phase 2, and his firm's contract was terminated. Mr. Higgins stated his firm was paid \$5 million, and was told that the firm's contract was terminated due to a change in direction. He discussed increased costs associated with the implementation of Phase 1 in part attributable to change orders. He noted the total cost of the project amounted to approximately \$40 million, not including a number of change orders. The committee received a copy of the Master Plan.

Mr. Greg Wright, IVH; and Mr. Gary Forshee, formerly with DAS. The committee received testimony from Mr. Greg Wright, an employee of IVH who served as a business manager for IVH and oversaw the project. Mr. Wright submitted an opening statement in writing. The committee also received testimony from Mr. Gary Forshee, a construction/design engineer who was an employee of DAS responsible for managing the project for the agency. Mr. Wright discussed the process of selecting Schemmer; his relationship with persons involved in the project, including the IVH's commandant at that time Mr. David Worley, and officials from DAS including Mr. Doug Woodley and Mr. Paul Carlson; the process of selecting OPN to replace Schemmer; the state's use of project labor agreements; the employment of DCI; his reluctance to certify the application to the VA for the renovation of the Dack and Malloy buildings; and informal communications he had with officials in state government regarding the project. Mr. Forshee discussed his role in managing the project before he was released from those duties. Mr. Wright and Mr. Forshee stated that there was a tendency to unfairly blame Schemmer for cost overruns and delays. Mr. Forshee stated that he agreed with some of the negative assessments but disagreed with others. They also discussed application deadlines required to receive federal matching moneys, the approval of change orders associated with Phase 1, the bid amounts for Phase 2 which exceeded Schemmer's estimates, and the impact of having a number of different commandants involved in the process.

Ms. Jodi Tymeson, IVH. The committee received testimony from Ms. Jodi Tymeson, current commandant. Ms. Tymeson noted that she assumed her new position approximately eight months ago and does not have first-hand knowledge regarding many of the decisions that were made regarding the project prior to her appointment. She discussed the VA's process of assigning applications on a list for federal funding, her decision to temporarily withdraw the VA application to construct the new CLC, and her intention to resubmit the application. She also explained the redesign of the CLC to accommodate 60 rather than 72 beds in order to satisfy new federal guidelines. Committee members and Ms. Tymeson discussed the need for better communication with members of the General Assembly, the degree that Schemmer's plans were not fully utilized, whether the VA would have approved the withdrawn application to fund the new CLC, and whether the VA will approve a new application to fund the CLC.

Mr. Doug Woodley, formerly with DAS. The committee received testimony from Mr. Doug Woodley, who served as the agency's Enterprise Chief Operating Officer during the project. Mr. Woodley stated that he had concerns regarding Schemmer, took corrective actions to restore the project's budget, was involved in issuing a new RFP to replace Schemmer, and was involved in employing DCI. He discussed the length of the RFP (1 page), and the response period provided to vendors (5 days). He stated that the RFP was judged by three persons, which included himself, Mr. Paul Carlson, and Mr. Ryan Lamb, who served as attorney for DAS. He also discussed the decision to employ DCI, incorporated on March 4, 2011, without issuing an RFP, allowing the firm to perform duties prior to the execution of a contract, and paying the firm approximately \$2 million. He discussed the deadline for submitting an application to the VA, the number of firms responding to the RFP, whether those firms were prepared to adequately respond to the RFP, and the use of new procedures when selecting firms to perform state contracting work which does not rely on general contractors.

Mr. Brant Carr, formerly with DAS. The committee received testimony from Mr. Brant Carr, who served as the agency's Administrator of State Design and Construction during the project. Mr. Carr described the agency's new process of eliminating a general contractor, employing a construction manager to oversee the work, and the contractual responsibilities of various firms who formerly were classified as subcontractors. Mr. Carr distributed written material prepared by DAS which outlined the project costs and savings. According to Mr. Carr's materials, the cost of Phase I equaled \$40,992,951.80 and the cost of change orders equaled \$2,618,206.71.

Mr. Paul Carlson, DAS. The committee received testimony from Mr. Paul Carlson, who serves as the agency's Chief Maximization Officer. Mr. Carlson stated that his role involved providing administrative support. He discussed the project, that four successive commandants were involved, the termination of Schemmer's contract, the length of the second RFP, the period provided for responses to the RFP, the number of firms responding to the RFP, the federal deadline for receipt of applications, that DAS is in the process of hiring personnel to administer or oversee construction contracts, the responsibilities of Ms. Charlee Cross who serves as a Senior Resource Manager and who reports to Mr. Carlson, and the hiring of DCI. Mr. Carlson stated that he was not certain whether the approximately \$2 million paid to DCI was connected solely to this project or a number of different projects.

Next Meeting. The next meeting is scheduled for June 25, 2014.

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